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Attorneys for Defendant  
LOGITECH, INC.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

ARTHUR FULFORD, on behalf of himself  
and all others similarly situated,

Plaintiff,

vs.

LOGITECH, INC., a California corporation,  
and DOES 1-100, inclusive,

Defendants.

Case No. C 08-02041 MMC

REQUEST FOR JUDICIAL NOTICE IN  
SUPPORT OF DEFENDANT  
LOGITECH, INC.'S MOTION TO  
DISMISS FIRST AMENDED  
COMPLAINT

Hearing Date: October 3, 2008

Time: 9:00 a.m.

Courtroom: 7

Judge: Hon. Maxine M. Chesney

Complaint Filed: April 18, 2008

Trial Date: None Set

Defendant Logitech, Inc. (“Logitech”) hereby requests that this Court take judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the document identified below. Logitech makes this request in support of its motion to dismiss the First Amended Complaint (“FAC”) filed August 11, 2008 by Plaintiff Arthur Fulford’s (“Plaintiff”) in the above-entitled action.

A court may take judicial notice of adjudicative facts if requested by a party and supplied with the necessary information. See Fed. R. Evid. 201(c). Judicial notice is appropriate where the adjudicative fact that is the subject of the request for judicial notice is either (1) generally known within the territorial jurisdiction of the trial court; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. See id. at 201(b).

“A court may consider ‘material which is properly submitted as part of the complaint’ on a motion to dismiss without converting into a motion for summary judgment.” See Lee v. City of Los Angeles, 250 F.3d 668, 688 (9th Cir. 2001) (quoting Branch v. Tunnell, 14 F.3d 449, 453 (9th Cir. 1994), *cert. denied.*, 512 U.S. 1219 (1994), *overruled on other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)). If, as here, “the documents are not physically attached to the complaint, they may be considered if the documents’ ‘authenticity ... is not contested’ and ‘the plaintiff’s complaint necessarily relies’ on them.” Lee v. City of Los Angeles, 250 F.3d at 688 (citation omitted.).

Of particular significance here is the holding in In re Portal Software, Inc. Securities Litigation, 2005 WL 1910923, at \*5 (N.D. Cal. Aug. 10, 2005) that where “a plaintiff fails to attach to the complaint the documents on which the complaint is based, a defendant may attach such documents to its motion to dismiss for the purpose of showing that the documents do not support plaintiff’s claim”) (citing Branch v. Tunnell, 14 F.3d at 453-54). In Branch, the Ninth Circuit elaborated as follows on the aforementioned concept:

We have said that a document is not “outside” the complaint if the complaint specifically refers to the document and if its authenticity is not questioned.



1 Townsend v. Columbia Operations, 667 F.2d 844, 848-49 (9th Cir. 1982).

2 The leading commentators state that “when [the] plaintiff fails to introduce a  
3 pertinent document as part of his pleading, [the] defendant may introduce the  
4 exhibit as part of his motion attacking the pleading.” 5 Charles Alan Wright  
5 & Arthur R. Miller, *Federal Practice and Procedure* § 1327, at 762-63 (2d  
6 Ed. 1990); accord Romani v. Shearson Lehman Hutton, 929 F.2d 875, 879  
7 n.3 (1st Cir, 1991). We have previously indicated approval of this rule, but  
8 have not explicitly adopted it. See, e.g., In re VeriFone Sec. Litig., 11 F.3d  
9 865, 868 n. 2 (As it makes sense and comports with existing practice, we  
10 hold that documents whose contents are alleged in a complaint and whose  
11 authenticity no party questions, but which are not physically attached to the  
12 pleading, may be considered in ruling on a Rule 12(b)(6) motion to dismiss.  
13 Such consideration does “not convert the motion to dismiss into a motion for  
14 summary judgment.” Romani, 929 F.2d at 879 n. 3.

15 See also, In re Autodesk, Inc. Sec. Litig., 132 F. Supp. 2d 833, 837 (N.D. Cal. 2000)  
16 (holding further that a court may consider the full text of a document that the plaintiff’s  
17 complaint only partially quotes). Additionally, a court is not required to accept as true  
18 allegations that contradict matters properly subject to judicial notice. See, e.g., Mullis v.  
19 United States Bankr. Ct., 828 F.2d 1385, 1388 (9th Cir. 1987).

20 The document attached hereto as Exhibit 1 consists of five pages comprised of a  
21 total of ten interrelated website postings all located at the same website address (the  
22 “Exhibit 1 Website Address”) within the www.logitech.com website. The “Exhibit 1  
23 Website Address” is as follows:



24 “[http://forums.logitechio.com/logitech/board/message?board.id=general\\_remotes&thread.id=4695](http://forums.logitechio.com/logitech/board/message?board.id=general_remotes&thread.id=4695).”

25 The “Exhibit 1 Website Address” is listed in two separate footnotes within the “Factual  
26 Allegations” section of the FAC—i.e., at ¶ 37 n. 5, in connection with a June 6, 2007  
27 posting on Logitech’s website; and at ¶ 33 n. 4, in connection with a June 4, 2007 posting  
28 on Logitech’s website.

1. The June 4, 2007 Posting on Logitech's Website, and at FAC, ¶ 37 & n. 5

Plaintiff's FAC, at ¶ 37 & n. 5, refers to one of ten postings (the "June 4, 2007 Don Harmony Posting") (also set forth below for ease of reference) contained in Exhibit 1 and locatable at the "Exhibit 1 Website Address" within the www.logitech.com website.


Notably, as explained in Part II of Logitech's memorandum in support of its motion, Plaintiff omits a critical fact regarding the June 4, 2007 Don Harmony Posting; i.e., its posting date—June 4, 2007 (which is eight months before Plaintiff allegedly bought his H1000). The June 4, 2007 Don Harmony Posting is located on page two of Exhibit 1, and is marked with a date and time "stamp" indicating it was posted to Logitech's website on "06-04-2007" at "01:50 PM."

Re: Harmony to drop Z wave completely in 1000!?!?!?		Options
 <p><b>DonHarmony</b> Logi Team Posts: 131 Registered: 07-12-2006</p>  <p>Message 4 of 22 Viewed 5685 times</p>	<p>I apologize for not previously posting a response to this discussion thread. This delay in posting may have caused some confusion regarding Z-Wave lighting capabilities of the Harmony 1000 and so I would like to clarify the situation by offering an official response on behalf of Logitech.</p> <p>The Logitech Harmony 1000 was announced in September 2006 at CEDIA. Although Z-Wave lighting was never formally announced, the plan at that time was to have full Z-wave support of third-party Z-Wave Modules. Since that date Logitech has made the decision not to offer control of Z-Wave compatible lighting and home automation equipment for the Harmony 1000 remote. The company is focused instead on improving the interaction with the Harmony 1000 as it relates to the control of audio &amp; video entertainment devices.</p> <p>Z-Wave lighting control will continue to be supported for the Harmony 890, Harmony 895 &amp; Harmony 890 Pro remote control.</p> <p>Kindest Regards,</p> <p>The Harmony Support Team</p> <p>Kindest Don</p> <p>Regards,</p>	
06-04-2007 01:50 PM		



2. The June 6, 2007 Posting on Logitech's Website, and at FAC, ¶ 33 & n. 4

Plaintiff's FAC, at ¶ 37 & n 5, refers to another of the ten postings (the "June 6, 2007 Tekin Posting") (also set forth below for ease of reference) contained in Exhibit 1 and locatable at the Exhibit 1 Website Address within the [www.logitech.com](http://www.logitech.com) website. Notably, as explained in Part II of Logitech's memorandum in support of its motion, Plaintiff omits a critical fact regarding the "June 6, 2007 Tekin Posting"; i.e., its posting date—June 6, 2007 (which is eight months before Plaintiff allegedly bought his H1000). The June 4, 2007 Don Harmony Posting is located primarily on page five of Exhibit 1, and is marked with a date and time "stamp" indicating it was posted to Logitech's website on "06-06-2007" at "09:08 AM."

Re: Harmony to drop Z wave completely in 1000!?!?!?		Options
<p><b>btekin</b> Logi Nu Posts: 1 Registered: 03-08-2007</p>  <p>Message <a href="#">10</a> of 22 Viewed 5510 times 06-06-2007 09:08 AM</p>	<p>I am very upset about logitech's announcemnet to drop z-wave. I have had my Harmony 1000 since March - right when it became available. I have suffered through the early firmware and connectivity problems in setting up the remote with my system. Whenever I inquired about z-wave with tech support, I was told the software was soon to come. I bought the RF extender from Logitech (which works great) specifically to work with the z-wave lighting controlls - once the software came out. Now I'm told I've invested \$650 and countless hours with tech support only to NOT have z-wave ? This is an outrage and Very deceptive on Logitech's part. I bought the Harmony 1000 remote in part because of It's z-wave compatability. Period. What's the point of having a "high end" remote if it doesn't perform as expected and promoted? Logitech, hear me loud and clear : YOU NEED TO UPDATE SOFTWARE TO CONTROL Z-WAVE Brock Tekin</p>	

The document attached hereto as Exhibit 1 is the appropriate subject of judicial notice because – under the circumstances, where Plaintiff's FAC alleges its location on Logitech's website and also alleges and necessarily relies upon portions of its contents, it is appropriate for the Court to take judicial notice of it.

1 Based on the foregoing, Logitech respectfully requests that the Court take judicial  
2 notice of Exhibit 1 attached hereto.

3  
4 DATED: August 28, 2008

PILLSBURY WINTHROP SHAW PITTMAN LLP

5  
6 By: /s/ Philip S. Warden

Philip S. Warden

7 Daveed A. Schwartz

8 Attorneys for Defendant

LOGITECH, INC.

# **EXHIBIT 1**

## Remote - General Discussion

Register · Sign In · Help

**Logitech Forums : Harmony Remote Controls : Remote - General Discussion : Harmony to drop Z wave completely in 1000!?!?!?!?**

 Reply Thread Options

 Message Listing  Previous Thread  Next Thread

Jump to Page: **1** · 2 · 3 | Next Page

 Reply

**Harmony to drop Z wave completely in 1000!?!?!?! [ Edited ]**

**Options** 

### Nolan

Logi Visitor  
Posts: 32  
Registered: 03-02-2007



Message 1 of 22

Viewed 5935 times

Mabe someone from Harmony can comment on this. There has been a reply from you guys posted at AVS which says the following: "Thank you for your recent inquiry about your Harmony Remote I have an update for you regarding Z-Wave functionality on the H1000 remote. Logitech has made the decision not to offer control of Z-Wave compatible lighting and home automation equipment for the Harmony 1000 remote. The company is focused instead on improving the interaction with the Harmony 1000 as it relates to the control of audio & video entertainment devices. If Z-Wave home automation is something that you have intended to implement with your Harmony remote, you can still get this feature with Logitech's Harmony 890 family of remote controls. We apologize for any inconvenience. If you have any questions or comments regarding the above information, please do not hesitate to contact our support team. " You may want to check out the response from your customers over at AVS. Maybe an official Logitech insider can post to say your stance. see post # 792 <http://www.avsforum.com/avs-vb/showthread.php?p=10680356#post10680356>

06-01-2007 07:51 AM

Message Edited by Nolan on 06-01-2007 07:51 PM

 Reply

**Re: Harmony to drop Z wave completely in 1000!?!?!?!?**

**Options** 

### smedley

Logi Browser  
Posts: 15  
Registered: 05-28-2007



Message 2 of 22

I beleive that zwave technology will be updated to the 1000 in 2008. The zwave chip is still in the 1000, its just a matter a adding software to the unit.



Viewed 5782 times

06-03-2007 07:17 AM



**Re: Harmony to drop Z wave completely in 1000!?!?!?!?**

**Options** ✓

**Nolan**

Logi Visitor  
Posts: 32  
Registered: 03-02-2007



Message 3 of 22

Viewed 5751 times

where did you hear 2008 from? Prior to see the email from harmony which said they are dropping it completely they told me "fathers day" Here is a quote from the email I got from Logitech. "I am sorry to hear that you are experiencing difficulties using your Harmony 1000. The issue with the Z-wave functionality, and the other issues with you Harmony have been logged and are being addressed. We will have this issue resolved in our subsequent release of our software and firmware updates. This is tentatively scheduled for the week of Father's Day. "

06-03-2007 12:18 PM



**Re: Harmony to drop Z wave completely in 1000!?!?!?!?**

**Options** ✓

**DonHarmony**  
Logi Team  
Posts: 131  
Registered: 07-12-2006



Message 4 of 22

Viewed 5687 times

I apologize for not previously posting a response to this discussion thread. This delay in posting may have caused some confusion regarding Z-Wave lighting capabilities of the Harmony 1000 and so I would like to clarify the situation by offering an official response on behalf of Logitech.

The Logitech Harmony 1000 was announced in September 2006 at CEDIA. Although Z-Wave lighting was never formally announced, the plan at that time was to have full Z-wave support of third-party Z-Wave Modules. Since that date Logitech has made the decision not to offer control of Z-Wave compatible lighting and home automation equipment for the Harmony 1000 remote. The company is focused instead on improving the interaction with the Harmony 1000 as it relates to the control of audio & video entertainment devices.

Z-Wave lighting control will continue to be supported for the Harmony 890, Harmony 895 & Harmony 890 Pro remote control.

Kindest Regards,

The Harmony Support Team

Kindest Regards,

Don

06-04-2007 01:50 PM



**Re: Harmony to drop Z wave completely in 1000!?!?!? [ Edited ]**

**Options** ✓

**Nolan**

Logi Visitor  
Posts: 32  
Registered: 03-02-2007

This is total bull. This remote was advertised at CES 2007 as offering total Z wave support. It even stated that on your website. Don, what can people do like myself who bought this remote for Zwave, but are now left high an dry with this remote?? Thanks I can not return it where I bought it because I have had it for months.

Message Edited by Nolan on 06-05-2007 07:43 AM

Message 5 of 22

Message Edited by Pegasus on 06-15-2007 03:19 AM

Viewed 5636 times

06-05-2007 07:39 AM



**Re: Harmony to drop Z wave completely in 1000!?!?!?**

**Options** ✓

**WannabeActuary** <sup>1</sup>

Logi Legend  
Posts: 6670  
Registered: 08-25-2006

for those financial buffs...time to short the stock



Message 6 of 22

Viewed 5628 times

06-05-2007 07:53 AM

**Samsung DLP HDTV (HLP-5063W), Scientific Atlantic HD DVR (Explorer 8000HD), LG DVD Player (LGDVB418), JVC VCR (HR-S5901U), Sony Receiver (STR-DE697), Xbox 360, Nintendo Wii....all with my Harmony One (Note: I am not affiliated with Logitech®, Inc.) Have you seen the FAO Stickv?**



**Re: Harmony to drop Z wave completely in 1000!?!?!?**

**Options** ✓

**smedley**

Logi Browser  
Posts: 15  
Registered: 05-28-2007

It was and is advertised that it is Zwave Compatible!! Can't dispute that!



Message 7 of 22

Viewed 5577 times

06-05-2007 04:26 PM



Re: Harmony to drop Z wave completely in 1000!?!?!?!

Options

### Alliances

Logi Nu  
Posts: 2  
Registered: 06-06-2007



Message 8 of 22

Viewed 5539 times

Don, Where do I send my Harmony 1000 for a refund? I bought it because it also had z-wave support, bought z-wave modules that were more expensive than x10 and did not require line of sight to a receiver to operate, everything thinking about integrating my HT control on a single controller. All sites that sell home automation solutions sell or say the Harmony 1000 is z-wave compatible. I've been misled to buy a product that should have the capability to support z-wave, over other options from your competitors, and now you(logitech) "decided" to change the focus. Well, let me tell you, you can't change the focus without giving back the money to everyone that bought into that specific function. Allan

06-06-2007 05:30 AM



Re: Harmony to drop Z wave completely in 1000!?!?!?! [ Edited ]

Options

### FragMonger

Logi Nu  
Posts: 3  
Registered: 06-06-2007



Message 9 of 22

Viewed 5519 times

DonHarmony wrote:  
The Logitech Harmony 1000 was announced in September 2006 at CEDIA. Although **Z-Wave lighting was never formally announced**, the plan at that time was to have full Z-wave support of third-party Z-Wave Modules. **Since that date Logitech has made the decision not to offer control of Z-Wave compatible lighting and home automation equipment for the Harmony 1000 remote.** The company is focused instead on improving the interaction with the Harmony 1000 as it relates to the control of audio & video entertainment devices.

Considering the fact that your own website STILL advertises the Harmony 1000 as z-wave compatible (link below), I consider this a VERY poor answer (more like an outright lie).

[http://www.logitech.com/index.cfm/remotes/universal\\_remotes/&cl=us](http://www.logitech.com/index.cfm/remotes/universal_remotes/&cl=us)

Why drop an ADVERTISED feature, if your have the software to support it (and obviously, you do - since other Harmony remotes use it).

*(Edited URL to prevent the page from stretching.)*

06-06-2007 08:48 AM

Message Edited by Pegasus on 06-14-2007 11:23 PM



Re: Harmony to drop Z wave completely in 1000!?!?!?!

Options



**btekin**

Logi Nu  
Posts: 1  
Registered: 03-08-2007



Message 10 of 22  
Viewed 5512 times

06-06-2007 09:08 AM

Jump to Page: **1** · 2 · 3 | Next Page

I am very upset about logitech's announcemnet to drop z-wave. I have had my Harmony 1000 since March - right when it became available. I have suffered through the early firmware and connectivity problems in setting up the remote with my system. Whenever I inquired about z-wave with tech support, I was told the software was soon to come. I bought the RF extender from Logitech (which works great) specifically to work with the z-wave lighting controls - once the software came out. Now I'm told I've invested \$650 and countless hours with tech support only to NOT have z-wave ? This is an outrage and Very deceptive on Logitech's part. I bought the Harmony 1000 remote in part because of It's z-wave compatability. Period. What's the point of having a "high end" remote if it doesn't perform as expected and promoted? Logitech, hear me loud and clear : YOU NEED TO UPDATE SOFTWARE TO CONTROL Z-WAVE Brock Tekin

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